judgment): This is an appeal against the judgment of the learned judge awarding damages to the plaintiffs in a running down case.

The facts of the case have been fully set out by him and I do not think I will go through them again. It is conceded by Mr. Donnelly that the car at the time of the accident was driving at more than 30 miles an hour. According to the plan, the road from Johore to Singapore was broken by a round-about and the accident happened, in my opinion, right in the middle of the road on the round-about.

According to Mr. Donnelly, the car, if it is going towards the round-about should be keeping to the right side nearer the round-about than on the other side. It therefore follows that the appellant's car should in this case be on the left side of the road if it is going towards Singapore, but in this case it was found right in the middle of the road where the accident happened. In my opinion as the deceased was right on the round-about, it is not necessary for him to give any signal. For a car going towards Singapore the appellant should be on a look-out for any other users taking the round-about.

It is all a question of fact and the learned trial judge has found on the facts that there was negligence on the part of the appellant and for myself I do not feel disposed to interfere with the decision of the learned trial judge.

With regard to the cross appeal I think since the appellant was driving at a great speed and since it was not the duty of the deceased to give any signal when he was taking the round-about, there was no contributory negligence on his part. I think the cross appeal should be allowed.

In the circumstances, the appeal by the appellant is dismissed, the amount assessed by the learned trial judge of $20,000 be maintained and the distribution should be in proportion to the amount awarded by the learned trial judge.

The appeal is dismissed, the cross appeal allowed, payment of the deposit of $500 to respondents.

Wee Chong Jin C.J. (Singapore): I agree that the appeal should be dismissed and the cross appeal allowed. It seems to me clear on the facts which are not really in dispute at this stage of the hearing that the deceased was in the round-about and not as contended by Mr. Donnelly travelling at some part of the highway leading from Johore to Singapore. That being the position the deceased was entitled to proceed round the round-about and was not in any way obliged, as the learned trial judge seem to indicate in finding he was 20 per cent. to blame, to see that there was any traffic coming from behind so as to make it safe for him to proceed in the direction he was going.

Tan Ah Tah F.J.: I agree that the appeal should be dismissed and the cross appeal allowed. I also agree with the orders proposed.

Appeal dismissed.

Cross-appeal allowed.

Solicitors: *Battenberg & Talma; N. A. Christopher.*

KEHAR SINGH v. KARUPPIAH

[O.C.J. (Gill J.) March 20, 1964]

[K.L. — Civil Suit No. 791 of 1962]

Moneylenders — Claim for money lent and interest — Memorandum not stating terms of promissory note or collateral security — Plaintiff's copy of memorandum not authenticated — Whether memorandum and on demand promissory note can be read together — Moneylenders Ordinance, 1951, s. 16.

Evidence — Presumption — Evidence Ordinance, 1950, s. 114(g).

The plaintiff a licensed moneylender agreed to lend to the defendant $11,500 on the security of an "On Demand" promissory note with interest at 12% per annum and on the provision of collateral security. The parties then went before a Justice of the Peace and signed the necessary memorandum and promissory note copies of which were delivered to the defendant. At about the same time the defendant deposited with the plaintiff certain title deeds as collateral security which are not the subject matter of these proceedings. The money was then paid by the plaintiff to the defendant who counted same in the presence of the Justice of the Peace. The plaintiff now sued for the recovery of the money lent and interest thereon. It was contended *inter alia* for the defendant that the amount claimed by the plaintiff was not recoverable because section 16 of the Moneylenders Ordinance had not been complied with as (i) the memorandum did not state the terms of the promissory note (no copy was attached) nor did it mention the collateral security by way of deposit of title deeds (ii) the certificate of authentication of the copy of the memorandum produced by the plaintiff was not signed by him as lender (the copy of the memorandum delivered to the defendant was not produced).

Held: (1) as it was satisfactorily proved that the form of promissory note was in existence when the memorandum was signed and as the memorandum and promissory note were signed almost simultaneously and a copy of the latter was supplied to the defendant as soon as same was signed the two documents can be read together to constitute a good memorandum under section 16 of the Ordinance;

(2) in the circumstances of this case an inference should be drawn in view of the presumption under section 114(g) of the Evidence Ordinance that the copy of the memorandum delivered to the defendant was authenticated by the plaintiff.

Cases referred to:—

(1) *Abirami Ammal & Anor.* v. *M.S.M.M. Meyappa Chettiar* [1959] M.L.J. 149 at p. 151.

(2) *Reading Trust Ltd.* v. *Spero* [1930] 1 K.B. 492.

(3) *F. Xavier* v. *K. Kathamuthu Konar* [1958] M.L.J. 286.

(4) *Kartar Singh* v. *Mahinder Singh* [1959] M.L.J. 248.

(5) *Ang Khye Pang* v. *Chop Ban Aik* [1939] M.L.J. 282, 285.

(6) *Subramaniam* v. *Konar* [1962] M.L.J. 385 at p. 287.

(7) *Tooke* v. *Bennett* (*T.W.*) *& Co. Ltd.* [1940] 1 K.B. 150.

ACTION.

K. Rajanayagam for the plaintiff.

R. Ponnudurai for the defendant.

Gill J.: This action by the plaintiff, who is a licensed moneylender, is for the recovery of money lent on the security of an "On Demand" promissory note executed by the defendant on 28th April, 1960 for $11,500 with interest thereon at 12 per cent per annum. As collateral security for the repayment of the money borrowed on the security of the promissory note, the defendant deposited with the plaintiff the title deeds to his lands comprised in E.M.R. 2202, 2993 and 2995 for Lots Nos. 134, 1177 and 1179 respectively in the Mukim of Api Api in the District of Kuala Selangor, and an endorsement to that effect was made on the back of the promissory note. No claim, however, is being made in these proceedings in respect of the collateral security.

The plaintiff's case is that on 28th April, 1960 he was carrying on the business of a moneylender at 80, Station Street, Kuala Selangor and that on that day the defendant approached him for a loan of $11,500. He informed the defendant that he would give him a loan provided the defendant had land titles. The rate of interest was to be 12 per cent per annum. The defendant agreed to take a loan on those terms. Both of them then left for Klang and went to the office of a Justice of the Peace named Lee Eng Teh. At the office of Mr. Lee Eng Teh the parties signed a memorandum and a promissory note in the presence of Mr. Lee. Copies of the promissory note and the memorandum were delivered to the defendant and at about the same time the defendant deposited his title deeds with the plaintiff. The money was then paid to the defendant and a sum of $36 was deducted in respect of stamps used for stamping the document. The defendant himself counted the money in the presence of Mr. Lee who attested the promissory note.

The plaintiff went on to say that no part of the principal sum mentioned in the promissory note has been paid but a sum of $920 was paid on 27th December, 1960 towards the amount of interest then due. The defendant has not given any evidence in rebuttal of this, but it was put to the plaintiff in cross-examination that the amount borrowed was $8,000 and that on 27th December, 1960 the defendant paid $5,840 and not $920 as alleged by the plaintiff. This was denied by the plaintiff. In the absence of any evidence by the defendant on this point I have no difficulty in finding as a fact that the principal sum on the promissory note is still due and that there was due by way of interest a sum of $2,415 up to 28th September, 1962.

The real defence to the action is that the amount claimed by the plaintiff is not recoverable because he has failed to comply, or that there has been a failure to comply, with the provisions of section 16 of the Moneylenders Ordinance, 1951. The only point for decision in this case therefore is whether or not the plaintiff is precluded from enforcing the contract and the security given in respect thereof for the repayment of the loan.

Section 16(1) of the Moneylenders Ordinance, 1951 provides that no contract for the repayment by the borrower of money lent to him by a moneylender, and no security given by the borrower in respect of any such contract, shall be enforceable unless a note or memorandum in writing in the English language or Romanised Malay be signed by the parties to the contract, and unless a copy thereof authenticated by the lender be delivered to the borrower before the money is lent, and no such contract or security shall be enforceable if the note or memorandum was not signed before the security was given. In this connection in *Abirami Ammal & Anor.* v. *M.S.M.M. Meyappa Chettiar*,[1] Thomson C.J., as he then was, delivering the judgment of the Court of Appeal, stated as follows:

> "Section 16 of the Ordinance clearly differentiates between the contract for the repayment of the loan and any security given in respect of that contract and it is of the contract that the note or memorandum must be delivered. That note or memorandum is required to contain all the terms of the contract and where it was a term of the contract that a particular security be given in respect of it, the particulars of that security would require to be stated either in terms or by reference (see *Reading Trust Ltd.* v. *Spero*[2]). Nevertheless the Ordinance treats the contract and the security in respect of it as separate and distinct things. There may be a contract without security; there may be a contract with security. In either case the note or memorandum must embody the terms of the contract and in the latter case it must also embody in one way or another the terms of the security."

Section 16(4) of the Ordinance provides that where the security takes the form of a promissory note which contains in the body of the note or writing thereon all the terms of the contract and is countersigned by the lender, such promissory note shall in itself be a sufficient note or memorandum of the contract. However, the delivery of a copy of the promissory note to the borrower does not exclude the operation of section 16(1) of the Ordinance, which requires the copy delivered to be authenticated by the lender. (See *F. Xavier* v. *K. Kathamuthu Konar*).[3] As stated by Good J. in *Kartar Singh* v. *Mahinder Singh* [4] authentication requires not merely that a signed copy of the

promissory note should be delivered to the borrower but that the lender should endorse upon it something in the nature of a certificate confirming that what the borrower receives is a copy of the original memorandum. In expressing this opinion His Lordship was following the opinion of McElwaine C.J. in *Ang Khye Pang* v. *Chop Ban Aik.*[5] The decision in that case did not turn upon the form of the authentication but upon the fact that it was not signed by the lender. There is no prescribed form of authentication so that it is for the court to say whether or not the form of authentication adopted in the circumstances of any particular case is sufficient.

In the present case there was a memorandum prepared as required under section 16(1) of the Ordinance, which has been produced in evidence and marked as P.2 This contained the names of the parties, the date of the loan, the principal sum lent and the rate of interest. It also stated that the borrower shall before the receipt of the sum of $11,500 execute in favour of the lender an "On Demand" as security for the repayment of the sum and interest thereon as aforesaid. It does not, however, state what the terms of the promissory note were and makes no mention of the proposed deposit of title deeds by way of collateral security. The lender has acknowledged on P.2 that a copy of it duly authenticated by the lender was delivered to him. A copy of the promissory note was also delivered to the borrower and he produced the copy delivered to him, which has been marked as D.7. It is quite clear that the certificate of authentication at the foot of D.7 was not signed by the lender so that if the plaintiff were to rely on the copy of the promissory note alone, the requirements of section 16 of the Ordinance have not been complied with.

It has been argued by the defendant that the memorandum itself does not satisfy the requirement of section 16 because it does not contain all the terms of the contract, in particular the term as regards collateral security. It is also contended by the defendant that there is no proof that a copy of the memorandum was given before the execution of the promissory note. The evidence of the plaintiff, as I have stated above, is that the whole transaction took place almost at the same time in the office of Mr. Lee. This is confirmed by the evidence of Mr. Lee himself. Mr. Lee said that a copy of the promissory note delivered to the defendant was authenticated. However, when D.7 was shown to him he admitted that it had not been signed in two places by the plaintiff. He was also unable to say in how many places in the copy of the memorandum the plaintiff put his signature. The evidence of the plaintiff with regard to this is that the memorandum is usually signed in two places but that he does not now remember in how many places it was signed. The copy of the memorandum delivered to the defendant has not been produced. In the circumstances I am entitled to draw an inference, in view of the presumption under section 114(g) of the Evidence Ordinance, 1950 that the copy of the memorandum delivered to the defendant was authenticated by the plaintiff.

It is quite clear from the evidence that the parties voluntarily went to the office of the Justice of the Peace to have the necessary documents drawn up in relation to the proposed loan. The various steps in the transaction took place so simultaneously that it will be reasonable to infer that the memorandum was signed first, followed by the signing of the promissory note and the delivery of the title deeds as collateral security and that the money was then paid to the borrower. As was stated by Thomson C.J. in *Subramaniam* v. *Konar*: [6]

> "Whatever happened physically to the actual money which was, so to say, put on the table it is beyond reason to suppose that the lender intended to abandon his own possession of it or that possession of it should pass to the borrower until those things were done. The fact that both parties went together voluntarily raises an irresistible inference that such was also the intention of the borrower. And until possession had passed I fail to see how the money could be said to be lent."

Taking the memorandum and the promissory note separately, there would appear to be no doubt that the provisions of section 16 of the Ordinance have not been complied with. The question which I now propose to deal with is whether the documents read together complied with the requirements of section 16. In *Reading Trust Ltd.* v. *Spero* the court, without deciding the point, expressed the view that the two documents in a case such as the present would constitute a sufficient note or memorandum of the contract, particularly where the promissory note can be identified as the one to which reference is made in the memorandum. The memorandum in this case called the security to be given an "On Demand". The plaintiff's evidence is that by "On Demand" was meant a promissory note. Indeed it will be more accurate to call it an "On Demand Promissory Note." I think it has been satisfactorily proved that the form of promissory note was in existence when the memorandum was signed. The promissory note was signed almost simultaneously so that there can be very little doubt that the two documents were connected with each other. In *Tooke* v. *Bennett (T.W.) & Co. Ltd.*,[7] it was held that the memorandum and a bill of sale could be read together to constitute a good memorandum under section 6 of the Moneylenders Act, 1937 provided the memorandum says that a copy of the bill of sale is attached to the memorandum, and the bill of sale is in fact so attached. In the present case there is no mention in the memorandum that a copy of the promissory note is attached. However, there is evidence that a copy was supplied

as soon as the promissory note was signed. In the circumstances, in my opinion, the two documents can be read together to constitute a good memorandum.

The burden of proving that an authenticated copy of the memorandum was handed to the borrower is upon the moneylender but where there is written acknowledgment by the lender that an authenticated copy of the memorandum was delivered to him, the onus is upon him to show either that no copy was delivered to him or that the copy delivered was not authenticated. The borrower has neither produced the copy delivered to him nor has he given any evidence and the presumption therefore is that an authenticated copy of the memorandum was delivered to him. If the copy of the memorandum was duly authenticated, the fact that the copy of the promissory note delivered was not authenticated is not material because the two documents can be treated as a sufficient memorandum. In the result I hold that the provisions of section 16 of the Ordinance have been complied with and that the plaintiff is entitled to succeed on this claim. Therefore there will be judgment for the plaintiff for $13,915 with interest on $11,500 at 12 per cent per annum from the date of filing of this action to date and thereafter on the amount of such judgment debt at the rate of 6 per cent per annum to the date of realization and costs.

Claim allowed.

Solicitors: *K. Rajanayagam*; *Rajendra & Teik Ee.*

WONG SWEE CHEW v. HOW MOU LEE

[O.C.J. (Gill J.) April 3, 1964]

[K.L. — Civil Suit No. 609 of 1963]

Partnership — Termination of — Judgment entered by 3rd party against partnership — Satisfaction of judgment debt by one partner — Claim by partner satisfying judgment debt against other partner for contribution — Partnership account.

Practice and Procedure — Application to sign final judgment — Defence filed — Order to consolidate present action with another action — Stay of proceedings pending taking of partnership accounts — Application under O. 54 r. 22A for further arguments.

The plaintiff and the defendant were partners in equal shares in a firm known as "Lee & Wong" which was terminated on March 31, 1956. One CKY, the wife of the defendant, obtained judgment against the firm in Civil Suit No. 448 of 1960 and the appeal including interest and costs for the sum of $45,167.90. This amount was paid by the plaintiff in full satisfaction thereof on July 30, 1963. The plaintiff now commenced this action in order to recover from the defendant $22,583.95 by way of contribution in respect of the partnership debt. On September 11, 1963 the plaintiff's solicitors took out a summons for leave to sign final judgment in the action on the ground that the defendant had no defence whatsoever to the action. The defendant filed his statement of defence on October 15, 1963 and on the same day took out a summons for an order that the present action be consolidated with the action in Suit No. 172 of 1963 between the same parties and for a further order that the proceedings in the consolidated action be stayed pending the preparation of the final accounts of the partnership. On October 21, 1963 the learned judge dismissed the application for leave to sign final judgment and made an order for consolidation of the two actions and a stay of proceedings in the consolidated action pending the preparation of the final accounts. The plaintiff then applied under Order 54 r. 22A of the Rules of the Supreme Court, 1957 for the hearing of further arguments.

At the hearing plaintiff's counsel argued that (a) there was a clear admission of liability by the defendant in his statement of defence (b) a counterclaim was no bar to a judgment on the claim unless it arose out of the claim and was so connected with its subject matter that it was in the nature of a defence and (c) in the circumstances of this case the court should exercise its inherent jurisdiction and make the order sought.

Held: (1) there was no admission of liability in respect of the whole of the claim;

(2) although the arguments of counsel as general statements of the law were perfectly accurate these statements of the law did not strictly apply in relation to partnership transactions. As the claim and the counterclaim were in relation to the partnership business it would be unjust to grant the application of the plaintiff to sign final judgment;

(3) in the absence of any proof that the counterclaim which the defendant had set up by way of a set off was frivolous and unsubstantial, it would be wrong for the court to grant the plaintiff any relief in the guise of the inherent jurisdiction of the court to the detriment of the defendant.

Case referred to:—

Sedgwick v. *Daniell* (1857) 2 H. & N. 319; 157 E.R. 132.

ACTION.

M. Shankar for the plaintiff.

L. E. Osman for the defendant.

Cur. Adv. Vult.

Gill J.: The parties to this action were partners in equal shares of a firm known as "Lee & Wong" which is said to have been terminated on the 31st March, 1956. In Civil Suit No. 448 of 1960 of this court one Chan King Yue, who is the wife of the defendant in the present action, obtained judgment against the firm for $35,000 together with interest and costs. The claim in that civil suit was based on a loan made by Chan King Yue to the firm on 26th November, 1955 in respect of which loan the firm had given her a receipt for the amount as evidence of the loan. The present defendant in his capacity as a partner of the firm did not contest the claim in that civil suit, but the present plaintiff did. The plaintiff also proceeded to appeal against the judgment in that civil suit but withdrew his appeal at the last moment. On the appeal being dismissed an order was made for the payment of costs of the appeal by the firm. The total amount against the firm in respect of the decretal